September 6, 2005

Ronald Sharp 1010 North Huntington St. Syracuse, IN 46567

Re: Formal Complaint 05-FC-161; Alleged Violation of the Access to Public Records

Act by the Indiana Bureau of Motor Vehicles

Dear Mr. Sharp:

This is in response to your formal complaint alleging that the Indiana Bureau of Motor Vehicles ("BMV") violated the Access to Public Records Act ("APRA") by failing to respond to your request for access to public records.

## **BACKGROUND**

On August 4, 2005 you filed a complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint # 05-FC-161. It appears that you made verbal requests and two written requests to the BMV for records. You provided a copy of a July 25, 2005 request, addressed to Commissioner Joel Silverman, that you filed with the BMV. In the request you stated that you had previously made two verbal requests to Mr. Silverman at a hearing conducted on July 1, 2005 in Syracuse. You also indicated that you had mailed a request on July 2, 2005. You provided this office with a copy of a receipt showing that you paid for delivery confirmation for the July 25, 2005 request. As of August 2, 2005 you had not received a response to any of your requests.

Mr. David Certo, Chief Legal Counsel for the BMV, responded to your complaint by letter dated August 23, 2005. A copy of the response and attachments are enclosed for your reference. Mr. Certo stated that your July 2, 2005 request was received by the BMV on July 7, 2005. He acknowledged that the BMV had not responded to that letter. Mr. Certo indicated that, at the time of your original request, the BMV did not have the records that you requested and was not required to create them in response to your request. Your July 25, 2005 letter was received by the BMV on August 8, 2005. The BMV contacted you via telephone on August 12,

<sup>1</sup> It appears that the delay in receiving your request was due to the request bearing the wrong zip code. The BMV provided a USPS confirmation that the letter was delivered on August 8, 2005 along with copies of the envelope in

2005. On August 12, 2005 the BMV also responded to your request in writing and provided you with the requested records.

Regarding your verbal requests made to Commissioner Joel Silverman, at a July 1, 1005 hearing in Syracuse, Mr. Certo asserts that the BMV does not have a record of those requests.

## **ANALYSIS**

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. IC 5-14-3-3(a). If a public agency receives a request for records via U.S. mail, facsimile, or e-mail, it has seven (7) days in which to respond. IC 5-14-3-9(b). If the person making the request is physically present in the office of the agency to deliver the request, the agency must respond within twenty-four (24) hours. IC 5-14-3-9(a). A request for records may be oral or written. IC 5-14-3-3(a); 5-14-3-9(c). If a request is made orally a public agency may respond to the request orally. IC 5-14-3-9(c). If the request is made in writing, the agency must respond to the request in writing. IC 5-14-3-9(c). A response may be an acknowledgment that the request for records was received, and a statement of how and when the public agency intends to comply. If the public agency fails to respond within seven (7) days of its receipt of the request, the request is deemed denied.

The BMV acknowledged that it did not respond to your July 2, 2005 letter requesting access to public records. Although the BMV did not have the requested records at that time it was, nevertheless, required to respond to your mailed request within seven (7) days. If an agency does not maintain the requested records, it must inform the requestor of such. The BMV's failure to respond to the July 2, 2005 request was a violation of the APRA.

The BMV received your July 25, 2005 request on August 8, 2005. It responded in writing on August 12, 2005. The BMV was required to respond within seven (7) days of receipt of the letter and did so. Therefore, the BMV did not violate the APRA in responding to your July 25th letter.

Regarding your verbal requests to the Commissioner at a public hearing in Syracuse, the BMV has stated that it has no record of those requests being made. If you were physically present in the office of the BMV and made an oral request for records the BMV was required to provide a response within twenty-four (24) hours of receiving the request; the response could have been oral. If the BMV received the request and failed to provide the required response, then it would be in violation of the APRA.

Additionally, when I spoke with you via telephone, you indicated that you were dissatisfied with the time that it took for the documents to be produced. The APRA does not specify a time for production or inspection of responsive records, but this office has stated that records must be produced within a reasonable time of the request. Often, this Office is asked to make a determination as to the reasonableness of the time for production by a public agency. What is a "reasonable" time period under one circumstance may not be reasonable under other

which the request was delivered. The US Postal Service stamped the envelope indicating "Delayed because of incorrect zip code." The envelope bears a postmark for Chesterton, IN 46304 dated August 6, 2005.

conditions. Production need not materially interfere with the regular discharge of the functions and duties of the public agency. IC 5-14-3-7(a). The determination of what is a reasonable time for production, therefore, depends upon the public records requested and circumstances surrounding the request.

In this instance, the records you requested were not created until after your July 2, 2005 request was received by the BMV. It is not apparent upon which date the records were created; however, it appears to have been a few days before August 9, 2005. While the BMV was required to notify you that it did not maintain the records in response to your July 2nd request, it was not required to notify you when the records were created thereafter. Therefore, the earliest date upon which the BMV was required to provide the records was August 8, 2005 when it received your July 25th request. While the BMV was not necessarily required to provide the records to you within seven (7) days of receiving the request it nevertheless did provide you with the records within seven (7) days. I find that the BMV produced the records within a reasonable time period after receiving the request.

## **CONCLUSION**

For the foregoing reasons, I find that the Indiana Bureau of Motor Vehicles violated the Access to Public Records Act when it failed to respond to your July 2, 2005 request for records. The Indiana Bureau of Motor Vehicles timely responded to your July 25, 2005 request for records by providing a written response and producing the requested records within seven (7) days and, therefore, did not violate the Access to Public Records Act. If you were physically present in the office of the Indiana Bureau of Motor Vehicles and made an oral request for records and the Indiana Bureau of Motor Vehicles failed to respond within twenty-four (24) hours of receiving the request then it would be in violation of the Access to Public Records Act.

Sincerely,

Karen Davis Public Access Counselor

cc: David Certo